IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 73 OF 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
DINESHBHAI M. AMIN - Opponent(s)

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Appearance :
MR. MANISH R. BHATT for Applicant(s).
MS. JOLLY PARIKH for MR. S.N. SOPARKAR for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 04/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Income-Tax Appellate Tribunal, Ahmedabad

Bench "C", in relation to Income-Tax Appeal No.2134/Ahd/1990 relating to Assessment Year 1986-87, has referred the following questions to this Court for its opinion:

> *"Whether the Appellate Tribunal is right in law and on facts in treating the income under the head other sources and directing allocation thereof amongst the beneficiaries?"*

2. It appears that the appellant-Trust was constituted during the accounting year relevant to Assessment Year 1982-83, it engaged itself in the business of manufacturing and supply of plastic bags to Nirma Group of Concerns, manufacturing detergent soaps. The business was being carried on in the name and style of M/s.Nirang Industries, of which the proprietor was the said Trust. The said business was converted into a partnership firm in the name and style of M/s.Nirang Industries as per the Partnership Deed dated 10th June, 1984 and yet another partner, Shri Uma Shiv Trust, was admitted. The said Shri Uma Shiv Trust happened to be a specific family trust. As per Clause-(1) of the Partnership Agreement, the goodwill of the business owned by Shiv Trust was not to be encashed or used during the subsistence of the partnership or on dissolution thereof.

The firm came to be dissolved *vide* Deed dated 1st January, 1986 and the Assessee-Trust retired from the firm and the other partner, Shri Uma Shiv Trust, became the sole proprietor of the business with its assets and liabilities except the goodwill. According to Clause-(3) of the Retirement Deed, Shri Shiv Trust granted license to Shri Uma Shiv Trust to use the name and goodwill of the business for a monthly compensation of Rs.25,000/-. The Assessing Officer, taking into consideration the totality of the circumstances, held that the payment of the said amount could be taken to be the income from other sources. The matter ultimately went to the Tribunal, which relying upon its decision dated 13th October, 1992 in Income Tax Appeal No.1387/Ahd/89 for the Accounting Year 1985-86 in case of Nirang Specific Family Trust, allowed the appeal in favour of the Assessee, observing that the facts of the cases were similar and identical.

3. It appears that a reference was made by the Tribunal to this Court in the matter of Nirang Specific Family Trust, which was registered as I.T.R. No.83 of 1994. A Division Bench of this Court, *vide* its judgement dated 27th September, 2005, has decided the issue in favour of the said Trust.

4. We had asked Mr.M.R.Bhatt, learned Counsel for the Revenue, that the facts floating on the surface of the record in the present case, are in any manner different from the facts in the matter of Nirang Specific Family Trust. Though the learned counsel for the Revenue submitted that if there were two Trust Deeds, then, each Trust Deed should have been examined on its own merits, but, he was unable to submit to the Court that there was any difference or distinctive feature in the matters of two Trust Deeds.

5. As in an identical matter, this Court has already held against the interest of the Revenue and nothing special has been brought on record to take a different view, we must hold that the Tribunal was justified in making the order against the interest of the Revenue. The question is answered against the interest of the Revenue. The Reference is, accordingly, disposed of. No costs.

[***R.S.Garg, J.***]

[***D. H. Waghela, J.***]

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